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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re DYLAN W. et al., Persons Coming
Under the Juvenile Court Law.

B259121
(Los Angeles County
Super. Ct. No. DK05774)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Teresa T. Sullivan, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and David Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

J.W. (Mother) appeals from the juvenile court's July 21, 2014 dispositional order removing Dylan W.¹ (born in 1999) and Zachary W. (born in 2000) from Christopher W.'s (Father) custody. Father is not a party to this appeal, and Mother does not appeal from the minors' removal from her own custody. She contends that the juvenile court erred because the evidence demonstrated that there were reasonable means by which the minors could be protected without removing them from Father's custody.

The Department of Children and Family Services (DCFS) challenges Mother's standing to bring this appeal. We conclude that, arguably, Mother has standing and that the juvenile court's dispositional order was supported by substantial evidence. We thus affirm.

BACKGROUND

The section 300 petition

On June 11, 2014, DCFS filed a section 300 petition pursuant to subdivisions (a) (serious physical harm), (b) (failure to protect), (c) (serious emotional damage), and (j) (abuse of sibling), alleging that the minors came within the jurisdiction of the juvenile court.²

As amended and sustained on July 21, 2014, the petition alleged in paragraph a-1 under section 300, subdivision (a) that Mother had pushed, struck, and bit Dylan, leaving a scar. Mother had pulled Zachary's hair and pushed him. The petition further alleged that Father should have known of Mother's physical abuse of the children and failed to intervene.

As amended and sustained, the petition alleged in paragraph b-3 under section 300, subdivision (b) that Mother had a history of alcohol abuse and was a recent user of alcohol and that Mother had been under the influence of alcohol while the minors were under her care and supervision. Mother also operated a vehicle while she was under the

¹ We note that the appellate record contains two spellings for this minor's first name, Dylan and Daylan.

² Undesignated statutory references are to the Welfare and Institutions Code.

influence and the minors were passengers. The petition further alleged that the minors were afraid of Mother and alleged that Father knew of Mother's alcohol abuse and failed to protect the minors. The remaining allegations were dismissed.

The events leading up to the jurisdictional and dispositional hearing

At all relevant times, Mother and Father have resided in Yuba County. On June 7, 2014, DCFS received an emergency referral that on December 26, 2013, Father had made arrangements for a relative who lived in Los Angeles County to care for the minors, but Mother and Father had never returned to pick them up. After the relative filed for legal guardianship on June 6, 2014, Mother and Father told the relative that they wanted the minors back and were coming to pick up the minors. The minors were afraid to go back to Yuba County with Mother and Father because they feared emotional and physical abuse from Mother.

DCFS spoke to maternal great-aunt Kandy B., who was the relative referenced in the emergency referral. Kandy informed DCFS that in December 2013, Father brought the minors to her and her husband (Mr. and Mrs. B.). They resided in Saugus, located in Los Angeles County. Father and Mother had not visited the minors since Father dropped them off. Kandy reported that Mother had been physically and emotionally abusive to the minors. Mother had bitten the minors, given them marijuana, and made them stay up all night cleaning the house. On one occasion, Dylan had called Kandy, crying hysterically. He told her that Mother had pulled his hair, been intoxicated while driving, and she tried "to get out of the car while it was moving."

Subsequently, Mother was placed on a psychiatric hold. Kandy also told DCFS that Mother had been "kicked out" of a rehabilitation center for "using crack." Mother "snorts her Percocet, she takes Xanax, Valium and Topamax." Kandy said Mother was a drama queen who needed attention and claimed to have cancer, but nobody believed her. Father would do whatever Mother wanted, and "[t]here is a lot of codependence there." Father was not physically abusive, but drank beer from morning until night. Father had threatened the minors not to say anything bad about him because he was in the military and was afraid he would lose his pension. Kandy feared the minors would end up dead.

Dylan told DCFS that Mother was a “drunk” and was physically and mentally abusive. She physically abused him “two, three times a week.” She had thrown him against a wall and bitten him. She had also broken his nose when she pushed him against a wall. The next day the right side of his nose bridge was bruised and he was certain others had noticed the bruise. He pointed out that his nose was “a little moved.” Mother had told him “she wishes I wasn’t there.” She had thrown Zachary’s belongings off the table and jumped on top of him. Mother had scratched Father, but Father had never been violent to Mother or the minors. On or about June 8, 2014,³ Dylan told DCFS that he wanted to stay with Mr. and Mrs. B. He did not want to return home because he was afraid of Mother and did not think programs would help her. Mother hid alcohol and always relapsed. A month later, Dylan told DCFS he would be willing to reside at home if Yuba County Child Protective Services checked on him once a month.

Zachary told DCFS that Mother and Father are “crazy.” He said Mother was “mean” and bipolar. She had pulled his hair and tried to punch him. Mother had driven with Zachary and his friends when she was drunk. She hit a stop light and almost hit the center divider. Mother had tried but failed five times to become sober, and Zachary did not believe she would quit drinking. When Zachary was 11 years old and had a headache, Mother gave him marijuana. When the minors told Father about Mother’s behavior, Mother and Father would fight for two days. Subsequently, the minors would tell Father only “half of what occurred while they were alone with [M]other.” Father would make the minors go to their rooms to protect them from Mother, but sometimes Mother would go to Dylan’s room and hurt him while Father was in the garage.

Zachary stated he would like to live with Father, but not Mother. He did not trust “anybody at home. I can trust my dad if my mom’s not there. It’s just when my mom’s there, like I’m about to die. Not die, like something bad is going to happen.” He stated he wanted to live with Mr. and Mrs. B. for “the rest of my life.” On the other hand, he

³ The record indicates that Dylan spoke to DCFS on June 6, 2014, but because DCFS received a referral on June 7, 2014, and others were interviewed on June 8, 2014, we assume the June 6, 2014 date was a typographical error.

also stated that he might be able to trust Mother ““more”” because she’s been getting help, and ““I think that I can go back and she won’t do anything.””

Mother told DCFS that in October 2013, she and Father had agreed to a safety plan with Yuba County Child Protective Services because she had ““an issue”” with alcohol. She explained that she had tried to drink herself to death when she was diagnosed with cancer. She wanted to save the minors from ““watching me die.”” Mother stated she would get so drunk she would black out. She had been told that she had bitten Dylan during one blackout. She recalled having been arrested, but could not remember for what crime. She claimed to have been sober for the past 165 days.

Father told DCFS that pursuant to a safety plan with Yuba County Child Protective Services, he released the minors to maternal grandparents after Mother had been put on a psychiatric hold in December 2013. Maternal grandparents then brought the minors to Mr. and Mrs. B. He stated that he had never seen Mother hit the minors and the minors had never told him that Mother hit them. He said she had bitten Dylan once when she was drunk; the police had arrested Mother for the biting incident. He denied having any knowledge that Mother had given the minors marijuana. He denied that Dylan’s nose had ever been broken, but Father could not remember one way or the other whether he had seen bruises on Dylan’s nose. He was not aware that Mother had driven with the minors while she was under the influence. Father later stated, ““There was no daily punching, kicking. I mean, it did happen but not on a daily basis like that.”” He admitted he should have done something sooner, but he ““was trying to keep our family together.””

When told by DCFS that the minors would be taken into protective custody, Father initially did not want to place the minors in foster care, stating, ““We can’t do that to our kids. They are fine with Kandy.”” Mother told him that her feelings were hurt and she did not want the minors with Mr. and Mrs. B. Later, Father told DCFS that if he and Mother could not have the minors, he did not want Mr. and Mrs. B. to have them, and he wanted them in foster care. Father subsequently stated he believed Mr. and Mrs. B. were coaching the minors and that they promised to give Dylan a car. He also explained he

had not seen the minors for six months because he had surgery in March and had been restricted from traveling for three months.

Paternal uncle Jackson W. reported he had been present and called the police when Mother assaulted Dylan by pushing him down on the bed and pinning him down by the throat. A sheriff's department report confirmed that Mother had been arrested for assaulting Dylan on July 23, 2013.

The minors were detained from the custody of Mother and Father and placed with Mr. and Mrs. B. DCFS reported on July 21, 2014, that Mother tested positive for alcohol on July 8, 2014.

The jurisdictional and dispositional hearing

At the July 21, 2014 jurisdictional and dispositional hearing, Mother and Father were each represented by counsel and waived their rights to trial; they entered pleas of no contest to the amended allegations in the section 300 petition. After accepting the waiver, the juvenile court found the minors were as described under section 300, subdivisions (a) and (b). The court denied DCFS's request to transfer the case for disposition to Yuba County, where Mother and Father resided. The court decided to retain the matter for disposition and then transfer the case to Yuba County for further proceedings, including provision of services. DCFS stated that it did not object to the proposed disposition.

At the dispositional hearing, Mother requested that the minors be ordered placed in the custody of Father, with Mother to move out of the home. Mother's counsel stated she had a place "they could stay if she were to stay in the home." Father also requested the minors placed in his custody, conditioned on Mother's moving out of the residence. The minors' counsel requested that the minors remain placed with Mr. and Mrs. B. because counsel did not believe Father would stop Mother from coming to the home if Mother were under the influence. DCFS requested that the minors remain with Mr. and Mrs. B. DCFS also brought to the court's attention "last-minute information" it had received that day, indicating that Mother had a positive alcohol test and "may have

relapsed.” Later in the hearing, Father submitted to DCFS’s recommendation because he did not want the minors to be removed from school mid-year.

The juvenile court ordered the minors removed from the custody of Mother and Father and placed in the care of DCFS for suitable placement “in the relative home.” The court noted that Father had failed to protect the minors from Mother’s chronic alcoholism and aggressive and violent behavior, resulting in the minors’ feelings of insecurity with Mother and Father. The court stated it would transfer the matter to Yuba County with a recommendation to investigate placement with Father on the condition that Mother move out of the house. The court concluded there was a substantial danger to the minors’ physical and emotional health if they were returned home to Mother and Father “until the parents are able to address the issues” that caused the minors not to feel safe with them. The court also found that there were no reasonable means to protect the minors without removing them from Mother and Father’s physical custody. The court found reasonable efforts had been made to prevent and eliminate the need for the minors’ removal from Mother and Father.

The juvenile court ordered Mother to enroll in programs and participate in random and on demand drug testing and mental health and individual counseling, with monitored visits. The court ordered Father to participate in individual counseling with referral to a program for people whose partners have mental health issues; Father’s visits were also to be monitored. The court ordered individual counseling for the minors and that they be interviewed regarding future placement with Father. The court ordered Mother and Father to appear in the Yuba County juvenile court and that “the matter” be placed on the Yuba County juvenile court calendar in three weeks. The court ordered DCFS to investigate placement of the minors with Father on the condition that Mother move out of Father’s home and that the minors are interviewed and to report the results of its investigation to the Yuba County juvenile court. Mother appealed.

DISCUSSION

Standing

DCFS contends that Mother lacks standing to pursue the appeal because she did not appeal the dispositional order removing the minors from her custody and Father did not appeal the order removing them from his custody.

In general, the issue of standing is liberally construed, and we resolve all doubts in favor of the right to appeal. (*In re H.G.* (2006) 146 Cal.App.4th 1, 9.) A parent who is aggrieved by a decision may appeal. (*Ibid.*) “To be aggrieved, a party must have a legally cognizable interest that is injuriously affected by the court’s decision. [Citation.]” (*Ibid.*) Merely taking a position on an issue that affects the minor does not establish a parent’s standing. (*In re D.S.* (2007) 156 Cal.App.4th 671, 674.) Rather, the parent must show that his or her personal rights are affected by a ruling. (*Ibid.*; *In re K.C.* (2011) 52 Cal.4th 231, 239 [father whose parental rights were terminated and did not appeal that order did not have standing to appeal order denying placement with grandparents]; *In re D.S.*, at p. 674 [father did not have standing where he failed to show how denial of mother’s modification petition, which did not relate to him and in which he had not joined, affected his interests].)

It is undisputed that the only part of the dispositional order at issue here is the removal of the minors from Father’s custody; as noted earlier, Mother did not appeal the removal of the minors from her own custody. Under the cases cited in the preceding paragraph, it would appear that, without more, Mother would not have standing to challenge removal of the minors from Father’s custody. Mother, however, contends that the dispositional order placing the minors in “distant out-of-home care has the potential to adversely affect” her interest in reunifying with the minors, and that this interest is sufficient basis for standing to appeal the order.

Until parental rights are terminated, a parent has an interest in the minors’ “‘companionship, care, custody and management” (*In re K.C.*, *supra*, 52 Cal.4th at p. 236.) A parent also has an interest in reunification with a dependent child. In *In re R.V.* (2012) 208 Cal.App.4th 837, a father did not appeal from the dispositional order

removing his minor son from his custody. (*Id.* at p. 848.) The Fourth Appellate District found that he had standing to challenge the juvenile court’s dispositional order removing custody from the mother and placing the minor in foster care because placement in foster care had “the potential to adversely affect the father’s own interests in reunifying with” the minor. (*Id.* at p. 849.)

We are cognizant that basing standing on the mere potential that an order may affect reunification threatens to engulf the general rule that a parent does not have standing to challenge a dispositional order affecting a party who did not appeal. (*In re R.V.*, *supra*, 208 Cal.App.4th at pp. 848–849 [“Ordinarily, an appellant cannot urge errors that affect only another party who does not appeal.”].) The record here demonstrates more than a mere potential. Here, the record demonstrated that Mother had a genuine concern that placement of the minors approximately 400 miles from her residence could make reunification substantially more difficult. We recognize that standing is thus a close question, but conclude based on the record that Mother has demonstrated a personal interest in reunification that arguably gives her standing to appeal from the dispositional order.

Substantial evidence supported the juvenile court’s order removing the minors from Father’s care

As noted earlier, Mother argues that “placement of her sons in a distant out-of-home care” could “adversely affect [her] own interest in reunifying with her sons,” and that in this way, “the parents’ joint interest in custody with Father was identical.” At the hearing, Mother reiterated that placement with Father in Yuba County would allow her “visitation [to] take place as quickly [as] possible.” Father echoed the difficulty of reunifying because “they live six and a half hours away,” making visitation and reunification “nearly impossible.”

Mother contends that there was no substantial evidence supporting removal of the minors from Father’s care because there were reasonable means by which the minors could be protected without removing them from Father’s custody. We disagree.

After the juvenile court adjudges a minor a dependent of the court, “it ‘may limit the control to be exercised over the dependent child by any parent’ and shall clearly specify those limitations in its orders. (§ 361, subd. (a).)” (*In re Damonte A.* (1997) 57 Cal.App.4th 894, 898.) The minor may not be removed from the physical custody of the parents unless “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).)

On review of a removal order, the appellate court determines whether there is substantial evidence, contradicted or not, that supports the conclusion of the trier of fact. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) All conflicts are resolved in favor of the judgment. (*Ibid.*)

Mother contends there were reasonable means to protect the minors without removing them from Father. She argues the minors were articulate teenagers and not of “‘tender years’ in need of an elevated level of protection.” Mother also points to Father’s and her participation in testing, family counseling, and classes, but admits she had a positive test for alcohol. She urges that the minors wanted to live with Father and that a reasonable alternative was releasing the minors to live with Father on the condition that she move out of the house.

We conclude that the juvenile court’s determination that reasonable efforts were made to prevent or eliminate the need for removing the minors and that there were no reasonable means to protect the minors short of removal from Father’s custody was supported by substantial evidence. First, the minors were fearful of Mother and did not want to live with her. Mother became physically abusive to the minors when drunk. She pushed, punched, and pulled the minors’ hair and bit Dylan. She had driven with the minors while she was intoxicated, which frightened them. There was evidence that Mother had abused drugs and offered marijuana to Zachary. The minors had seen

Mother attempt and fail to become sober many times. Mother admitted she had recently tested positive for alcohol.

Second, the record gives proof of the minors' fear that Father would not protect them from Mother if they remained in Father's custody, even on the condition that Mother move out of the house. Father was described by Kandy as having a codependent relationship with Mother and that he would do whatever she wanted. In that vein, he admitted to DCFS that he knew Mother had a problem but did not do anything sooner because he wanted to keep the family together. Although the minors told Father of Mother's physical and verbal abuse, Father denied that they ever told him anything. Subsequently, the minors began to withhold information from Father because when they had complained in the past, Father and Mother fought. Father also denied that Mother physically abused the minors, except he admitted Dylan had been abused on the occasion when the police were called. He denied seeing bruises on Dylan's nose, denied knowing that Mother had driven with the minors while under the influence, and denied knowing that Mother had given the minors marijuana. He minimized Mother's punching and kicking of the minors, stating that "'it did happen but not on a daily basis.'" There was evidence that he told the minors not to say anything bad about him for fear of losing his military pension.

Third, even after commencement of the dependency case, Father put Mother's wishes above the interests of the minors. For example, he initially told Mother and DCFS that the minors were fine with Mr. and Mrs. B. and he did not want to put the minors in foster care. After Mother's strenuous objections and comments that her feelings were hurt and that she did not want Mr. and Mrs. B. to have the minors, Father changed his position. He stated that if Mother and Father could not have the minors, Mr. and Mrs. B. could not have them either. He again minimized the minors' reports, dismissing them as the product of Mr. and Mrs. B.'s coaching.

Accordingly, the juvenile court reasonably could conclude Father would disobey a placement conditioned on Mother's moving out and would fail to protect the minors from Mother if the minors remained in his custody. In sum, there was substantial evidence to

support the juvenile court's finding that conditional placement with Father was not a reasonable alternative to removal.

We note that the juvenile court went to great lengths in its order to address the near future possibility of placement with Father conditioned on Mother's moving out of the home when the court transferred the case to the Yuba County juvenile court, ordered that the parents appear at a hearing to be scheduled in three weeks in the Yuba County juvenile court, and ordered DCFS to investigate such a conditional placement and report its findings to the Yuba County juvenile court.

For all these reasons, we affirm the juvenile court's dispositional order removing the minors from the custody of Father.

DISPOSITION

The juvenile court's July 21, 2014 dispositional order is affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.*

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.